

APPEAL NO. 022801  
FILED DECEMBER 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 3, 2002. With respect to the sole issue before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 10th quarter. The claimant appealed, asserting that her treating doctor's reports specifically explained why she had no ability to work in any capacity and arguing that the hearing officer erred in giving presumptive weight to the designated doctor's report. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. The claimant proceeded at the CCH on the theory that she had no ability to work; therefore, at issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(d)(4). The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, that she reached maximum medical improvement and had an impairment rating greater than 15%, that she did not commute any portion of her impairment income benefits, and that the qualifying period for the 10th quarter ran from March 28 to June 26, 2002.<sup>1</sup>

A good faith effort to obtain employment may be shown by complying with one of the subparagraphs of Rule 130.102(d). The requirements of Rule 130.102(d)(4) are met if the claimant has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The claimant testified that she could not work and that her treating doctor had not released her to work. In evidence is a report from the designated doctor and a functional capacity evaluation (FCE) (from another medical facility) that indicates that the claimant has the ability to work in a sedentary capacity. The hearing officer commented that while the treating doctor's report "is sufficient on its face to show the claimant to be incapable of any work," he found that the claimant had some ability to work, according to the FCE and the designated doctor's report. Good faith effort is a factual determination for the hearing officer to resolve and here, the hearing officer did not err in determining that the claimant did not attempt in good faith to obtain employment commensurate with the claimant's ability to work during the qualifying period for the 10th quarter.

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<sup>1</sup> The issue, as certified from the benefit review conference, included the dates of the 10th quarter as July 10 through October 8, 2002, and those dates were not disputed.

The claimant also argued that the hearing officer erred in giving presumptive weight to the designated doctor's report because the report was received by the Texas Workers' Compensation Commission after the qualifying period for the 10th quarter. The hearing officer specifically addressed this issue and noted that "[e]ven without the presumption of correctness attached to a designated doctor report, [the designated doctor's] report is persuasive as a medical document showing that, as of the time period in question here, the claimant had some ability to work." The hearing officer clearly did not give presumptive weight to the designated doctor's report and only treated it as another medical report. The hearing officer did not err in doing so.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

JG  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Veronica Lopez  
Appeals Judge